

# **EXHIBIT 603**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

KATHY McCORNACK, an individual; )  
DANIEL E. McCORNACK, JR., an )  
individual; and RALPH J. )  
McCORNACK, a minor by and )  
through his Guardian ad Litem, )  
Plaintiffs, )  
vs. ) MDL No. 2:09-CV-0671  
ACTAVIS TOTOWA, LLC, et al., )  
Defendants. )  
\_\_\_\_\_ )

DEPOSITION OF RICHARD T. MASON, MD  
Volume II

DATE: Thursday, August 11, 2011

TIME: 10:39 a.m.

PLACE: Pulone & Stromberg  
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Suite 150  
San Jose, California 95126

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1 (Deposition Exhibits 16, 17, 18, 19, 20, 22,  
2 23, 24, 27, 28, 29, 30, 31, pre-marked by  
3 Mr. Moriarty.)

4 RICHARD T. MASON, MD,  
5 having been first duly sworn by the Certified  
6 Shorthand Reporter to tell the truth and nothing  
7 but the truth, was examined and testified as  
8 follows:

9 EXAMINATION BY MR. MORIARTY

10 Q. Dr. Mason, as you know, my name is Matt  
11 Moriarty, my -- what I'm going to try to do today is  
12 that I'm going to try very hard not to repeat things  
13 that we went over in 2009; okay?

14 A. Okay. My hearing is not all that great, so I  
15 would ask that you speak up just a little bit.

16 Q. Okay. Let me see if this moves.  
17 What I was saying is that I'm going to try very  
18 hard not to repeat things that we went over in 2009;  
19 okay?

20 A. Good.

21 Q. So if I do repeat, I'm sorry, it's either  
22 necessary or I have forgotten that I asked you that in  
23 2009; okay?

24 A. Okay.

25 Q. All right. If the title and the authority of

1 coroner in Santa Cruz County is in the sheriff, what do  
2 you have to do administratively to get them to sign off  
3 on death certificates and autopsy reports?

4 A. Basically I generate a half page document that  
5 sort of duplicates the lines on the state death  
6 certificate form, and I fill this out with the name of  
7 the decedent, the time of the autopsy, the autopsy  
8 number, the date, and then there is various lines, and I  
9 fill those lines in, and then I just initial this form  
10 and that is -- well, the system now is -- is on line, so  
11 somebody puts it in right away.

12 Q. Okay.

13 A. The sign-off is done by -- usually by the  
14 investigator, who is one of three cops that I work with,  
15 and that is the coroner's investigator for this  
16 particular case.

17 Q. Okay.

18 A. The coroner service is in the investigation  
19 bureau of the Santa Cruz County Sheriff's Department.

20 The assignments are long term, it takes  
21 probably more than a year to educate a police officer.  
22 First off, you have to start with somebody that has some  
23 brains, that's the major requirement, and then they  
24 learn, or they have to learn how to interact with the  
25 physicians, how to get medical records, how to ask

1 questions of physicians and hospital personnel.

2 That information is put up in a preliminary  
3 report. I read that, I may ask for additional data.  
4 They will have obtained medical records if it's local  
5 and it's possible, and then I will do the autopsy, make  
6 a determination as to what I think is the cause and  
7 manner of death, fill out this form, and that's put into  
8 the system, and that's it.

9 Q. Okay. So when -- in this case, when you  
10 amended the autopsy and death certificate in 2009, did  
11 you have to post this form to one of the sheriff's  
12 investigators?

13 A. Yes.

14 Q. Did they ask for an explanation for why you  
15 were changing the death certificate and the autopsy  
16 conclusion?

17 A. I believe I referred them to the NMS toxicology  
18 report and the digoxin level. That was my reason.

19 Q. Is there any written correspondence to that  
20 effect in your file?

21 A. I don't know that there is, no.

22 Q. All right. So in our first session --

23 And by the way, Allison, I'm going to want the  
24 pages numbered consecutively, don't start over.

25 THE REPORTER: That's what I do.



1 MR. MORIARTY: Okay, good.

2 Q. I know I asked you back then how many -- when  
3 you last took care of living patients, and I know it was  
4 in the '60s, so I want to ask you something related to  
5 that; okay?

6 How many times in your career have you  
7 diagnosed digoxin toxicity in living patients?

8 MR. ERNST: Objection.

9 You can go ahead and answer the question.

10 A. I can't ever remember doing that.

11 BY MR. MORIARTY:

12 Q. What are your board certifications and by whom  
13 are you certified?

14 A. American Board of Pathology, Anatomic  
15 Pathology, Clinical Pathology, Forensic Pathology.

16 Q. And it's the American Board that does all three  
17 of those?

18 A. Yes. Normally --

19 Q. Do you have --

20 A. -- the examinations for anatomic path and  
21 clinical path are taken sort of simultaneously. You  
22 cannot be eligible to sit for examinations in forensic  
23 path until you at least have certification in anatomic  
24 pathology.

25 Q. And when did you sit for the boards in forensic

1 pathology?

2 A. You know, I don't remember. I think you have a  
3 copy of my CV here somewhere. It should be on there.

4 Q. Well, did you have to sit for a board or were  
5 you grandfathered in?

6 A. No, no, I sat for the boards. I took the  
7 boards. Passed the board.

8 The grandfather business was back many, many  
9 years ago, people would get certified without  
10 examination. I took the -- I took and passed the  
11 forensic path exam.

12 MR. MORIARTY: Okay. And I have -- your CV  
13 was --

14 Madam Court Reporter, if you want to open the  
15 packet with the exhibits. Exhibits 1 through 15 are the  
16 exhibits from the first deposition.

17 (Discussion off the record.)

18 BY MR. MORIARTY:

19 Q. So No. 6 in that stack, Doctor, is your CV.

20 MR. ERNST: Are there two copies there of the  
21 same thing?

22 MR. MORIARTY: I assumed you guys would have  
23 these, so I think I only sent one.

24 It's way up towards the front, Doctor.

25 MR. ERNST: (Indicating.)

1 A. Yes.

2 BY MR. MORIARTY:

3 Q. Okay. So first of all, have you updated your  
4 CV at all since --

5 A. No --

6 Q. Okay.

7 A. -- I haven't, no.

8 Q. So show me on here where it tells me when you  
9 took the forensic path board.

10 A. Okay. Down at the bottom of the first page it  
11 says "certified in forensic pathology --

12 Q. Got it.

13 A. -- by --

14 Q. Okay.

15 A. -- American Board of Pathology May 1973."

16 Q. All right. Thank you.

17 Have you had any opportunity in the last two  
18 years to go back and figure out how many times you may  
19 have diagnosed digoxin toxicity as a cause of death?

20 A. No. I don't know.

21 Q. Okay.

22 What's going on, Don?

23 MR. ERNST: Nothing.

24 BY MR. MORIARTY:

25 Q. How many times have you testified in a civil

1 case that a drug either caused or did not cause a death?

2 MR. ERNST: A drug? Objection.

3 You can go ahead and answer the question.

4 MR. MORIARTY: Yes.

5 A. I don't know.

6 BY MR. MORIARTY:

7 Q. Have you ever done it in a civil case?

8 MR. ERNST: Objection.

9 You can go ahead and answer the question.

10 A. You know, I think I have. But I couldn't give  
11 you a time and date or tell you what the drug was.

12 BY MR. MORIARTY:

13 Q. All right. In how many criminal cases do you  
14 believe you have testified that a drug either caused or  
15 did not cause a death? Criminal case.

16 A. That's sort of a rare occurrence. It usually  
17 is in regard to opiates administered by a second party.  
18 It's a rare phenomenon. You know, it may have happened  
19 three to five times. Again, I can't remember any  
20 specifics.

21 Q. Okay. In those rare times when that has  
22 happened, was there also a toxicologist who testified?  
23 Excuse me.

24 A. You know, I don't recall whether the  
25 toxicologist testified. It may very well be that I

1 testified about the results reported in a toxicology  
2 report.

3 Q. All right. Now, when you say "opiates," I  
4 don't know the answer to this, is cocaine considered an  
5 opiate or not?

6 A. It is not. We are talking about -- mostly we  
7 are talking about morphine base from heroin. Heroin --

8 Q. Have you ever --

9 A. -- being diacetylmorphine.

10 Q. Have you ever testified that cocaine was a  
11 cause of death?

12 A. Yes.

13 Q. Okay. Do you know how many times you have done  
14 that?

15 A. In a criminal case?

16 Q. Yes, sir.

17 A. Again, I think that would be a rare occurrence.

18 Q. Okay. In your practice as a pathologist, do  
19 you ever consult with hospital pharmacists about drug  
20 issues?

21 MR. ERNST: Objection.

22 You can go ahead and answer the question.

23 A. No.

24 BY MR. MORIARTY:

25 Q. These investigators that you deal with who work

1 in the sheriff's department, are they trained to ask  
2 families sort of what happened the day of the death and  
3 questions about, you know, were there any unusual  
4 medical conditions, things of that nature?

5 A. Yes.

6 Q. Do you rely on those investigators as part of  
7 your conclusion about cause of death?

8 A. Yes.

9 Q. Obviously among other things, but that's  
10 something that you do rely on; correct?

11 A. Yes.

12 Q. In this case, and whether you use Exhibit 1 in  
13 your stack, or Exhibit 7, both of which are copies of  
14 the sheriff's investigation --

15 MR. ERNST: What is it that you want? You want  
16 Exhibit 1 or Exhibit 7?

17 MR. MORIARTY: Either one. I think they are  
18 the same. It's the Sheriff's Summary of Investigation.

19 THE WITNESS: Yes.

20 BY MR. MORIARTY:

21 Q. Did any of your investigators elicit history  
22 from the McCornack family about visual or  
23 gastrointestinal problems within a day or two of Mr.  
24 McCornack's death?

25 MR. ERNST: Objection. The document speaks for

1     itself.

2           A.   To my memory, there was some reporting of a  
3   bloating which, you know, sounded like some sort of  
4   gastrointestinal stress.

5   BY MR. MORIARTY:

6           Q.   Can you show me that in Exhibit 1, please?

7           MR. ERNST:  Objection.  He didn't say it came  
8   specifically from Exhibit 1.

9           MR. MORIARTY:  Well, I asked if his  
10   investigators elicited it, so it should be in Exhibit 1.  
11   That's what I'm asking about.

12          MR. ERNST:  Objection, argumentative.

13          A.   You know, I don't see it there.

14   BY MR. MORIARTY:

15          Q.   Okay.

16          A.   I'm not sure where it came from, but I  
17   recall --

18          Q.   Have you -- since October of 2009 when I took  
19   your deposition, have you read the deposition testimony  
20   of Kathy McCornack?

21          A.   No.  No, I haven't.

22          Q.   All right.  Now I believe at the last session  
23   of your deposition you had some books with you.  One of  
24   them is marked Exhibit 12.

25          A.   Yes.

1 Q. And if you look at Exhibit 12, on page 1066 --  
2 the numbers are in the upper left-hand corner, Doctor.

3 A. Yeah, I've got it.

4 Q. In the second column --

5 A. Yes.

6 Q. -- first full paragraph it says "anorexia,  
7 nausea, and vomiting, which are among the earliest signs  
8 of digitalis intoxication, are caused by direct  
9 stimulation of centers in the medulla and are not of  
10 gastrointestinal origin."

11 Do you see that statement?

12 A. Yes.

13 Q. Do you have any reason to disagree with it?

14 A. No.

15 Q. And then further towards the end of that  
16 paragraph it says "chronic digitalis intoxication may be  
17 insidious in onset and characterized by exacerbations of  
18 heart failure, weight loss, cachexia, neuralgias,  
19 gynecomastia, yellow vision, and delirium."

20 Did I read that correctly?

21 A. I'm trying to find it.

22 Q. It's toward the end of that paragraph.

23 A. Yeah.

24 MR. ERNST: On what page?

25 MR. MORIARTY: 1066.



1 THE WITNESS: It's on page 1066.

2 MR. ERNST: Okay.

3 THE WITNESS: And it's --

4 BY MR. MORIARTY:

5 Q. Do you have any reason --

6 A. Yeah, it sounds reasonable to me, yeah.

7 Q. Okay. And the investigators in this case did  
8 not elicit a history of anorexia, nausea, vomiting,  
9 yellow vision, weight loss, et cetera, did they?

10 A. No.

11 MR. ERNST: Objection. No foundation.

12 You are asking whether or not the investigators  
13 did. It's a speculative issue. I'll object.

14 BY MR. MORIARTY:

15 Q. Is it in their report that they provided to  
16 you, Dr. Mason, that they did elicit such a history?

17 MR. ERNST: Objection, no foundation.

18 You can go ahead and answer the question.

19 A. No.

20 In response to your question, you might want to  
21 read the next sentence on that paragraph.

22 BY MR. MORIARTY:

23 Q. You are talking about at 1066?

24 A. Yeah. The next sentence says "digitalis-toxic  
25 cardiac arrhythmias precede extracardiac

1 (gastrointestinal or central nervous system) toxicity in  
2 about one half of cases." So --

3 Q. Does --

4 MR. ERNST: He is not done yet.

5 MR. MORIARTY: Okay, I'm waiting.

6 A. So, you could very well have a digoxin caused  
7 arrhythmia and not have the symptoms that you have  
8 spoken of.

9 BY MR. MORIARTY:

10 Q. Does the book say lethal cardiac arrhythmias?

11 A. Well, it doesn't say "lethal," but it says  
12 toxicity, so toxicity is something that could be  
13 associated with a fatal result.

14 Q. Do you have any clinical experience in the  
15 number of times in which fatal cardiac arrhythmias  
16 precede all of the prodromal symptoms described in this  
17 book?

18 A. No, I don't have any such experience.

19 Q. Would you defer to a cardiologist on that  
20 subject?

21 MR. ERNST: Objection.

22 A. Yes.

23 MR. ERNST: For what purpose? But objection.

24 You can go ahead and answer the question.

25 A. Yeah, I'd defer to a treating cardiologist,

1 sure.

2 BY MR. MORIARTY:

3 Q. Okay. Is there a toxicologist on staff at  
4 Santa Cruz County?

5 A. No.

6 Q. How often do you consult with toxicologists as  
7 part of your practice?

8 A. Extraordinarily infrequently.

9 Q. And when you do, who are they?

10 A. Usually they would be somebody at NMS.

11 Q. Okay. So you would not pick a toxicologist  
12 practicing in central California, you would pick a  
13 toxicologist associated with a laboratory who had done  
14 work for you?

15 A. Yes. Prior --

16 Q. Okay.

17 A. -- to my use of NMS Laboratories there was a  
18 group in Alameda County that had their own toxicology  
19 service. And the name of the toxicologist escapes me  
20 now, but he was someone I knew. He had either done or  
21 supervised the tests that we had sent to him on our  
22 specimens, and I used to talk to him.

23 Q. Okay. Have you ever testified about postmortem  
24 redistribution of any drug?

25 A. No.

1 Q. Not even on cross-examination?

2 A. Well, in this case I think it's come up  
3 significantly, but I don't recall another case where  
4 there was some significant issue regarding postmortem  
5 redistribution.

6 Q. All right. Have you been to any seminars that  
7 you can recall in the past five years at which  
8 postmortem toxicology was a subject, including PMR?

9 A. No.

10 Q. Have you ever taught about PMR?

11 A. No.

12 Q. Have you ever been asked to?

13 A. No.

14 Q. Can you identify a single piece of peer  
15 reviewed medical literature that says that digoxin in  
16 peripheral blood specimens does not undergo any  
17 postmortem redistribution?

18 MR. ERNST: Objection.

19 But you can go ahead and answer the question.

20 A. No. I don't know of any such article.

21 BY MR. MORIARTY:

22 Q. All right. Are you aware of any peer reviewed  
23 medical literature which indicates a scientifically  
24 reliable calculation to back-calculate from a postmortem  
25 digoxin level to an antemortem digoxin level?

1 MR. ERNST: Objection.

2 You can go ahead and answer the question.

3 A. Yes. I have seen such literature, yes.

4 BY MR. MORIARTY:

5 Q. Can you identify any of it for me?

6 A. I don't recall.

7 Q. In the course of your practice, have you had  
8 cases where cocaine was the cause of death?

9 A. Yes.

10 Q. Was cocaine identified in postmortem blood  
11 sample?

12 A. Yes.

13 Q. Is there any therapeutic level in man for  
14 cocaine?

15 A. I'm sure there is. It's only used in  
16 anesthesia. There is no parenteral administration of  
17 cocaine that I'm aware of that's in medical practice.

18 Q. Okay. So in a postmortem specimen, if the  
19 question was whether cocaine played a role in the death,  
20 would it be necessary to quantify the cocaine level?

21 MR. ERNST: Objection on the issue of cocaine.

22 Can I have a continuing objection on this  
23 issue? It's not -- so I don't have to continually  
24 interrupt you, Mr. Moriarty.

25 MR. MORIARTY: Yes.

1 MR. ERNST: Thank you.

2 A. Yes. It would be necessary to quantify the  
3 cocaine if one were going to attribute death to a  
4 cocaine level, yes.

5 BY MR. MORIARTY:

6 Q. Okay. Do you have a copy of your first  
7 deposition in this case?

8 A. Yes.

9 Q. Have you reviewed it before today?

10 A. Yes.

11 Q. Okay. Could you turn for me to page 54.

12 A. Okay.

13 Q. And if you go down to line 16, and you can read  
14 as much of this page as you want after I ask you this  
15 question.

16 We were talking about postmortem  
17 redistribution, and you said, at line 16 through like  
18 19, "as I said before several times, I think it would be  
19 more of a prominent factor with heart blood and less  
20 with peripheral blood."

21 Do you see that?

22 A. I see it.

23 Q. Okay. What I want to find out from you right  
24 now is whether, in your opinion, peripheral blood  
25 undergoes no postmortem redistribution with digoxin or

1 whether it's just less than heart blood.

2 A. I would think --

3 MR. ERNST: Go ahead. There is an objection to  
4 the form of the question, but go ahead.

5 A. I would think it would be less.

6 BY MR. MORIARTY:

7 Q. Okay. And do you have any peer reviewed  
8 medical literature that tells you how to quantify it in  
9 terms of how much less?

10 A. No, I don't have any.

11 Q. All right. Do you have an opinion from your  
12 own experience as to how much less a peripheral blood  
13 specimen of digoxin would redistribute versus a central  
14 blood or a heart blood sample?

15 MR. ERNST: Objection.

16 You can go ahead and answer the question, if  
17 you can.

18 A. I don't know how much less. It's just the  
19 biological situation where you have aliquots of blood in  
20 the heart chambers and there is ready access to the  
21 chambers of the heart, which with the particular drug --  
22 we are talking about digoxin here, are we?

23 BY MR. MORIARTY:

24 Q. Yes, sir, yes, sir.

25 A. With digoxin bound to the cardiac muscle, so I

1 -- from a common sense point of view, I would think a  
2 heart chamber specimen would be a less reliable measure  
3 of an antemortem level than peripheral blood.

4 Q. Okay. Is there any reason why you did not draw  
5 a vitreous sample in this case?

6 A. You know, from my reading I recall that  
7 vitreous samples were very difficult to interpret as  
8 regarding -- in regard to digoxin.

9 Q. Are you done with your answer?

10 A. Yes.

11 Q. Okay. Well, when you were doing the samples in  
12 this case, at the time you didn't even know you were  
13 going to be looking for digoxin, so let me ask the  
14 question a different way; okay?

15 Do you routinely draw vitreous samples?

16 A. No, I don't.

17 Q. Do you ever?

18 A. Sometimes I do, yes.

19 Q. Had you done any research regarding vitreous  
20 levels of digoxin prior to the performance of this  
21 autopsy in March 2008?

22 A. No.

23 Q. How often do you draw more than one blood  
24 sample when you do an autopsy?

25 A. I usually take at least 20 ML of blood. And



1 that's what I take. In addition I take urine and liver.

2 Q. Do you believe you took 20 ML in this case?

3 A. I think so.

4 Q. Okay. So my question is -- well, I'll ask it a  
5 different way: Do you ever take more than one sample?

6 In other words, a certain amount from, say, a femoral  
7 vein and a certain amount from the heart?

8 A. No, not usually.

9 Q. Is your -- is your routine to draw your  
10 specimen from the axillary vein?

11 A. Yes, it is.

12 You know, if -- it may be because of postmortem  
13 changes that you can't get an adequate sample from an  
14 axillary vein, in which case I might very well go to the  
15 aorta.

16 Q. Okay. Do you know, from a forensic point of  
17 view, what the difference is between a serum sample and  
18 a whole blood sample taken after death, from a  
19 quantification standpoint?

20 A. With regard to what drug?

21 Q. It's a very bad question, let me ask it again.

22 When a patient is alive, when you draw levels  
23 of, say digoxin, you are drawing serum levels; correct?

24 A. Correct.

25 Q. When somebody is dead all you can draw is

1 what's known as a whole blood sample; correct?

2 A. Correct.

3 Q. And I'm not asking you about timing or anything  
4 like that, but is there a difference between serum and  
5 blood in the assessment of the quantification of a drug  
6 level of digoxin?

7 MR. ERNST: Objection.

8 You can go ahead and answer the question.

9 A. Yes, I would think there would be.

10 BY MR. MORIARTY:

11 Q. And what is your understanding of what the  
12 difference would be?

13 A. I don't know.

14 Q. Would the level typically be higher in a whole  
15 blood specimen than it would in a serum specimen?

16 A. I think it probably would be, yeah.

17 MR. MORIARTY: All right. All right. I was  
18 asking you about the axillary vein.

19 Ms. Court Reporter, there is a folder called  
20 Pictures, Exhibits 29, 30 and 31. There is an extra  
21 copy for Don. Could you give them to Don and the  
22 witness, please.

23 THE REPORTER: Of course.

24 BY MR. MORIARTY:

25 Q. Do you have those in front of you, Doctor?

1 A. Not yet.

2 MR. ERNST: Oh --

3 BY MR. MORIARTY:

4 Q. Do you have them now?

5 MR. ERNST: I'm sorry. I thought they were all  
6 supposed to be -- the court reporter was going to give  
7 him copies. I'm sorry, I misunderstood.

8 MR. MORIARTY: Don, there should have been one  
9 for you and one for the doctor.

10 MR. ERNST: Right. But the court reporter gave  
11 them to me and I've now given them to witness, Exhibits  
12 29, 30, 31.

13 BY MR. MORIARTY:

14 Q. Do you see these, Doctor?

15 A. Yes, I see them.

16 Q. All right. These are three -- just for the  
17 record, these are three different anatomical drawings of  
18 the area of the axillary vein; correct?

19 A. Yes.

20 Q. From your many years of experience, is any one  
21 of these three more accurate than the others?

22 A. No. 2, I think, is a little bit more  
23 physiologic.

24 No. 30, I'm sorry.

25 BY MR. MORIARTY:

1 Q. 30?

2 MR. ERNST: 30.

3 A. Yes.

4 BY MR. MORIARTY:

5 Q. So let's look at 30.

6 Would it be fair for me to say that the  
7 axillary vein begins, or branches, at the terminus, so  
8 to speak, of the right subclavian vein in this drawing?

9 A. Yes.

10 Q. And that that right subclavian branches to  
11 become the axillary and the cephalic; correct?

12 A. Yes.

13 Q. And then further towards the arm in this  
14 drawing the axillary branches to become the brachial and  
15 the basilic veins; correct?

16 A. Basilic, yeah.

17 Q. All right. So in your experience, how long is  
18 the axillary vein?

19 A. Could be six -- something like six inches. It  
20 would depend on the anatomy of the person, how big a  
21 person they were. You know, if you are looking at a  
22 small person, it would be less.

23 Q. The size of these veins is variable depending  
24 on the person; is that correct?

25 A. Yes, to some degree, sure.

1 Q. And does the precise location of these  
2 branchings vary from person to person?

3 A. It can vary somewhat. Venous anatomy is a  
4 little bit more variable than arterial anatomy.

5 Q. All right. So tell me where -- what dissection  
6 you would do and where you would access the axillary  
7 vein for purposes of your postmortem blood draw?

8 A. It would be probably pretty close to its  
9 bifurcation point.

10 Q. The proximal or distal bifurcation point?

11 A. The proximal.

12 Q. All right. So --

13 A. No, you know, somewhere in between, you know,  
14 the -- it would sort of be on a level with the shoulder  
15 joint. If you draw a line down through the shoulder  
16 joint, you know, that's what you are going to get.

17 Q. Okay. All right.

18 So if the patient, you know, the decedent on  
19 your mortuary slab or your autopsy table, if you were  
20 going to do the dissection, you would be going into the  
21 shoulder?

22 A. Into the armpit. The axilla.

23 Q. Okay. All right.

24 And then you are going to up towards the  
25 shoulder, or are you going in towards the chest?

1 A. You make a cut up towards the shoulder joint.

2 Q. Okay. How much time have you spent meeting  
3 with Mr. Ernst since your deposition in October of 2009?

4 A. Today was the first time I've seen him since  
5 the deposition.

6 Q. How many times have you spoken on the phone?

7 A. In the past week, twice maybe.

8 Q. Okay. Since your deposition in October of  
9 2009, what additional material have you reviewed  
10 regarding this case?

11 A. I looked at a pharmacology book to refresh my  
12 memory of the physiology of digoxin.

13 Q. What book was that?

14 A. It's a Lange publication, Katzung and Trevor's  
15 Pharmacology Examination and Board Review. Publication  
16 date is -- the latest edition is 2005.

17 Q. Okay. Is there anything else that you have  
18 reviewed since your deposition in October of 2009?

19 A. I looked at some statements of various  
20 witnesses, and I just had an opportunity to sort of scan  
21 the depositions of Dr. Amy McMaster and Keith Gibson.

22 Q. Their depositions or their written reports?

23 A. Both.

24 Q. Okay. Have you seen the deposition of Dr. Lemm  
25 or Dr. Von Dollen?

1 A. No, I haven't seen those.

2 Q. What about Dr. Barbieri from NMS Labs?

3 A. No, I haven't seen that.

4 Q. What about Matthew McMullen from NMS labs?

5 A. No.

6 Q. Have you seen any testimony or report from a  
7 toxicologist in Denver named Kennon Heard?

8 A. Repeat that name, please.

9 Q. Kennon Heard, H-e-a-r-d.

10 A. No, I have not.

11 Q. Have you seen any reports or testimony from an  
12 internist in Illinois named Bill Galanter,  
13 G-a-l-a-n-t-e-r?

14 A. No.

15 Q. Have you reviewed any medical literature other  
16 than the pharmacology book you identified?

17 A. No, not really.

18 Q. All right. So let's get back to the first  
19 stack of exhibits. Exhibit -- let's go to Exhibit 5.

20 Are you at Exhibit 5?

21 A. What is it?

22 Q. It's the amended autopsy report.

23 MR. ERNST: They are not marked real well, Mr.  
24 Moriarty.

25 A. Okay, in my own --

1 BY MR. MORIARTY:

2 Q. It should have an exhibit sticker in the lower  
3 right-hand corner.

4 A. Yeah, I've got it.

5 Q. Okay. Flip back to the NMS reports, please.

6 A. (Witness complying.)

7 Yes.

8 Q. The first of these is dated April 16, 2008; is  
9 it not? The first NMS report.

10 A. Yeah, I believe so. Yes.

11 Q. Okay. Do you have that there?

12 A. Yes.

13 Q. All right. And in this specimen diltiazem was  
14 identified at 630 nanograms per milliliter; is that  
15 correct?

16 A. That's correct.

17 Q. At no point in either your first autopsy or  
18 your amended autopsy, did you ever identify diltiazem as  
19 a potential cause of death; is that correct?

20 A. Correct.

21 Q. Have you amended the autopsy or death  
22 certificate since early October 2009?

23 A. No.

24 Q. All right. In the second NMS toxicology  
25 report, which is a couple pages after the one I just



1 asked you about, is June 24, 2008; correct?

2 A. Correct.

3 Q. And this is the one that has digoxin in it; is  
4 that right?

5 A. Yes.

6 Q. Now, if you go back to Exhibit 1, the Summary  
7 of Investigation by the sheriff's office.

8 A. Yes.

9 Q. To the best of your knowledge, this document  
10 has not been changed since the time you changed the  
11 autopsy and death certificate, has it?

12 A. I don't think so, no.

13 Q. All right. In the lower left-hand column it  
14 looks -- I'm sorry, the lower left-hand corner it looks  
15 like there is a date of August 26, 2008.

16 Do you see that?

17 A. No. Are you referring to the investigation  
18 report?

19 Q. Yes, sir. First page of Exhibit 1, lower  
20 left-hand corner. Looks like an initial and then the  
21 date 8/26/08.

22 Do you see that?

23 A. Yeah, yeah.

24 Q. Okay. Now by 8/26/08 the investigator had both  
25 toxicology results and your autopsy report; correct?

1 A. Yeah.

2 MR. ERNST: Matt, before you go -- Matt, before  
3 you go, we have been going about an hour and I have been  
4 drinking coffee and I would like to take a short  
5 five-minute comfort break.

6 MR. MORIARTY: Can I just ask one more  
7 question? Or is it urgent?

8 MR. ERNST: Well, at my age it's urgent.

9 MR. MORIARTY: Okay. That's fine.

10 MR. ERNST: Thank you.

11 MR. MORIARTY: Five minutes?

12 MR. ERNST: Five minutes.

13 (Break taken.)

14 BY MR. MORIARTY:

15 Q. So, Dr. Mason, what I was trying to figure out  
16 is when you did your first autopsy report, which is  
17 Exhibit 2, did you have either of the two toxicology  
18 reports?

19 A. No. Obviously the toxicology report comes  
20 after the autopsy report. The toxicology specimens are  
21 obtained during the course of the autopsy.

22 Q. Yes, but I don't know whether you, as a matter  
23 of practice, hold on the final version of this till you  
24 have received some toxicology.

25 A. I can't remember.

1 Q. All right.

2 A. I might very well have signed that out prior to  
3 the toxicology report. I sometimes do that.

4 Q. Okay. Okay. And just so I'm correct, there is  
5 no change in the autopsy report itself between Exhibits  
6 2 and 5 --

7 A. No.

8 Q. -- other than the first page; correct?

9 A. Correct.

10 MR. MORIARTY: I'm getting a lot of  
11 interference.

12 THE REPORTER: It's the coffee maker, it just  
13 stopped.

14 MR. ERNST: I don't know why it's going, Matt,  
15 forgive me.

16 MR. MORIARTY: Okay.

17 MR. ERNST: The interference was not  
18 intentional.

19 MR. MORIARTY: That's fine.

20 Q. Have you ever spoken with Kathy McCornack, Dr.  
21 Mason?

22 A. No.

23 Q. Have you ever spoken with either Dr. Lemm or  
24 Dr. Von Dollen?

25 A. No.

1 Q. Have you ever consulted with a toxicologist  
2 about this case since you did the autopsy?

3 A. No.

4 Q. Would it be fair for me to say that the only  
5 person that you discussed the substance of this autopsy  
6 with, other than when you and I have been on the record,  
7 has been Mr. Ernst?

8 A. Yes.

9 Q. Do you know that Mr. McCornack was taking a  
10 drug called Prilosec?

11 A. I don't recall that I know it -- that I knew  
12 that at the time. You know, usually I would look at any  
13 medications that were in the possession of the patient  
14 at the time of death. And the investigators usually  
15 make out a list of medications.

16 I don't recall whether I knew that he had  
17 Prilosec or not.

18 Q. And I may have misspoken, he may have been on  
19 Prevacid, which could be a different -- slightly  
20 different medication.

21 But what is Prevacid for?

22 A. I believe they are H2 inhibitors. I use  
23 Prilosec.

24 Q. But what are they for, commonly?

25 A. Hyperacidity of the stomach.

1 Q. It's like gastroesophageal reflux or --

2 A. Gastroesophageal reflux can occur during sleep  
3 if you have got hyperacidity, yeah.

4 Q. Okay. Does hyperacidity ever cause bloating?

5 A. You know, speaking personally, and having the  
6 problem, I can't recall that it ever does, no.

7 Q. Does it cause GI distress?

8 A. Oh, yes.

9 Q. Okay. If somebody is not a smoker, and they  
10 smoke a cigar, can they get nauseous or get an upset  
11 stomach?

12 MR. ERNST: Objection.

13 You can go ahead and answer the question.

14 A. Yes, they could.

15 BY MR. MORIARTY:

16 Q. All right. What's the -- if you know, what's  
17 the mechanism by which that can occur?

18 A. You inhale, or raise your blood level of carbon  
19 monoxide, for one. You are inhaling combustion  
20 products.

21 And then nicotine is a potent vasoconstrictor,  
22 to my memory, so, you know, some combination of those  
23 effects, perhaps.

24 Q. Okay. Do you know whether or not Dan McCornack  
25 smoked a cigar on the 22nd of March 2008?

1 A. I have no information on that.

2 Q. All right. If he did, assuming he did, is that  
3 a possible explanation for any GI upset that he may have  
4 had?

5 A. It could be, it could be a contributing factor,  
6 yeah.

7 Q. Okay. Can -- can the consumption of beer cause  
8 gastrointestinal symptoms?

9 A. It could, yes.

10 Q. Including bloating?

11 A. Yes. It certainly has a certain amount of  
12 carbon dioxide in it, it could cause some bloating  
13 effect, sure.

14 Q. All right. What is myocardial fibrosis?

15 A. It's fibrous tissue noted within the  
16 myocardium.

17 Q. All right. What can cause it?

18 A. Anoxia, chronic anoxia could cause it.

19 If it's focal, if you have got a major scar,  
20 then that would be an indication of myocardial -- prior  
21 myocardial infarction that has healed.

22 Q. Well, in this autopsy you describe mild  
23 diffusely distributed myocardial fibrosis.

24 A. Yes.

25 Q. What is the most likely cause of that?

1 A. Probably anoxia.

2 Q. Which means reduced oxygen to the heart muscle?

3 A. Yes.

4 Q. Which could be from an MI, or what?

5 MR. ERNST: Objection.

6 But go ahead.

7 A. Well, you know, he has got an enlarged heart.  
8 It's a 500 gram heart. He has got coronary arteries  
9 that supply blood to that increased muscle mass, so  
10 there can be some overall, you know, lack of optimal  
11 oxygen levels in the myocardium. And I think I recorded  
12 it as mild.

13 BY MR. MORIARTY:

14 Q. I believe I read directly it says mild  
15 diffusely distributed myocardial fibrosis.

16 A. Yes.

17 Q. So can myocardial fibrosis be arrhythmogenic?

18 A. Yes. Yes, it could.

19 Q. Can left ventricular hypertrophy be  
20 arrhythmogenic?

21 A. Yes.

22 Q. Is atrial fibrillation itself an arrhythmia?

23 A. Yes.

24 Q. Can coronary atherosclerosis, mild to moderate,  
25 cause arrhythmias?

1 A. Yes.

2 Q. Without an actual microscopic section, what is  
3 your confidence level in ruling out a myocardial  
4 infarction in this case?

5 A. You know, after doing this work for about -- at  
6 that time, I don't know, now it's 30 years, it's fairly  
7 high.

8 Q. Okay. Do you know what HLA 27 is?

9 A. It's a genetic disorder. I don't specifically  
10 know what it is, no.

11 Q. Do you know anything about it and whether it  
12 can cause arrhythmias and sudden cardiac death?

13 A. No, not specifically.

14 Q. Who is -- this guy's name -- I'm looking for  
15 something in the autopsy. Excuse me a minute while I  
16 look for something here.

17 I think it's in Exhibit 4. Yes, Exhibit 4.

18 A. Yes.

19 Q. Lower left-hand corner, who is Alan Burt?

20 A. He is one of my three cops. I've got a  
21 sergeant and two deputies that are semi-permanent  
22 coroner investigators. It's a voluntary assignment.

23 They are afraid to arbitrarily assign people  
24 that do not ask for the job because of psychological  
25 trauma or what have you. So Alan Burt is someone I've



1 worked with for about 25 years. He originally was an  
2 investigator, he made sergeant, and now he is in charge  
3 of the coroner's section.

4 Q. Is he a doctor?

5 A. No, no. He is a cop.

6 Q. All right. I would like you to turn to Exhibit

7 7 --

8 A. (Witness complying.)

9 Q. -- and go about two-thirds of the way back,  
10 there is a report, letter report, from a Dr. Winkle on  
11 the letterhead of Cardiovascular Medicine and Cardiac  
12 Arrhythmias. Single-spaced, typed, three-page report.

13 Can you let me know when you have found that?

14 A. I will.

15 MR. ERNST: I haven't found it yet, either.

16 BY MR. MORIARTY:

17 Q. In my Exhibit 7 it's really about two-thirds of  
18 the way back. It's among the records that were faxed to  
19 your office from Dr. Von Dollen.

20 A. Yeah, I have it.

21 Q. Okay. Have you read this?

22 A. Yes.

23 Q. When was the last time you read this?

24 A. I don't recall.

25 Q. All right. Were you aware from reading this

1 that Mr. McCornack complained of chronic fatigue?

2 MR. ERNST: Objection, vague as to time.

3 BY MR. MORIARTY:

4 Q. Well, you can answer my question.

5 And if you don't remember, Doctor, and you want  
6 me to point you to the places in this that say something  
7 about fatigue, I would be happy to do that to save time.

8 A. Yeah, go ahead.

9 Q. All right. So about two-thirds of the way  
10 through that paragraph on the first page he is talking  
11 about how he can feel when he has an irregular  
12 heartbeat.

13 Do you see that?

14 A. Yeah.

15 Q. And then it says "he does feel that he is" --  
16 it says "tried" but I assume it means "tired and  
17 fatigued and not really a hundred percent."

18 Do you see that?

19 A. Yeah.

20 Q. And then under Impression on page 2, halfway  
21 through No. 1, says "he has a lot of fatigue and lack of  
22 energy, which he attributes to his atrial fibrillation."

23 Do you see that?

24 A. Yes.

25 Q. Do you know whether or not atrial fibrillation

1 can cause chronic fatigue?

2 A. I would think it could, yes.

3 Q. All right. Let's go back to page 1, about five  
4 lines after where I was reading to you about the  
5 fatigue. It says "he pops his head up with a pillow at  
6 night because he breathes better and has some  
7 heartburn."

8 Do you see that?

9 A. I see it.

10 Q. And when patients prop their head up with  
11 pillows and wear Breathe Right nasal strips and still  
12 snore, is that a possible sign or symptom of -- I'm  
13 blanking on the disease.

14 A. You mean sleep apnea?

15 Q. Obstructive sleep apnea. Thank you.

16 MR. ERNST: I'm going to object.

17 But go ahead.

18 A. Yes.

19 BY MR. MORIARTY:

20 Q. I mean, if you don't -- go ahead.

21 A. It could be, yeah.

22 Q. Okay. All right.

23 And on the next page, do you see under  
24 Medications it talks about -- Prevacid is item No. 4;  
25 correct?

1 A. Yes.

2 Q. Under Social History it says "he uses  
3 Copenhagen chewing tobacco."

4 Do you see that?

5 A. I see it.

6 Q. And then it says "quitting four months ago."

7 Do you see that?

8 A. Yes.

9 Q. "He has two to four beers daily. He has three  
10 cups of coffee daily."

11 Do you see that?

12 A. Yes.

13 Q. All right. And then on the last page of this,  
14 if you look at the paragraph numbered 2, it refers to  
15 the "HLA 27 gene positive with relatively few symptoms  
16 related to this."

17 Do you see this?

18 A. Yes.

19 Q. And are these all things that you would have  
20 been aware of at the time you did your autopsy report?

21 A. Yes, I think so. I don't know exactly when we  
22 got these records, whether they were available at the  
23 time of the autopsy or not.

24 MR. MORIARTY: Okay. Could you please hand the  
25 doctor and Mr. Ernst Exhibit 28.

1 THE REPORTER: Okay.

2 BY MR. MORIARTY:

3 Q. Have you ever seen this before?

4 A. Yeah, I think so.

5 Q. All right. On the second page of the exhibit,  
6 it's a letter from Susan Mauriello to the members of the  
7 Board of Supervisors; correct?

8 A. Correct.

9 Q. And at the end of the second paragraph it says  
10 "Dr. Mason is nationally and internationally recognized  
11 for his expertise, particularly in the area of gunshot  
12 wounds and firearm ballistics, blunt and sharp  
13 instrument trauma and biomechanics."

14 Do you see that?

15 A. Yes.

16 Q. What is your national and international  
17 recognition in these matters?

18 MR. ERNST: Objection.

19 But you can go ahead.

20 A. I participated with some people that I knew  
21 from my Vietnam experience evaluating the lethality of  
22 the M-16 rifle, which came into question.

23 BY MR. MORIARTY:

24 Q. Okay.

25 A. So, you know, it was a federal project and that

1 was the essence of the reputation.

2 Actually, I'm a firearms collector, shooter,  
3 and I've done some casual experimentation. That's it.

4 Q. With ballistics gelatin, or something else?

5 A. You know, when I participated in the federal  
6 project, in the military project, we had ballistic  
7 gelatin. It's a very expensive material to deal with,  
8 it's cumbersome, but yeah, we used it then.

9 MR. MORIARTY: Okay. Could you please hand Dr.  
10 Mason and Mr. Ernst Exhibit 16.

11 THE REPORTER: (Complying.)

12 BY MR. MORIARTY:

13 Q. Dr. Mason, have you ever read this Vorpahl and  
14 Coe article?

15 A. I think I have at some remote time. I knew Dr.  
16 Coe.

17 Q. Was he a pathologist or a toxicologist?

18 A. No, he was a forensic pathologist.

19 Q. All right. At the bottom of the first page --  
20 I'm sorry, on the second page, under Results, do you see  
21 the Results section?

22 A. Yes.

23 Q. It says "postmortem intervals ranged from 1.0  
24 to 22.4 hours, with a mean of 10.8 hours."

25 Do you see that?

1 A. Yes.

2 Q. Was the postmortem interval in this case 78 or  
3 79 hours?

4 A. Yes, I believe it was.

5 Q. All right. The next sentence says, "compared  
6 to antemortem levels, average postmortem serum digoxin  
7 levels were significantly higher in samples taken from  
8 the heart, subclavian vein, and femoral vein."

9 Do you see that?

10 A. Yes.

11 Q. All right. And just so we are clear, in this  
12 case the axillary vein from which you drew the blood  
13 specimen is not one of the three locations that Vorpahl  
14 and Coe used in their particular work; correct?

15 A. Yes, that's true.

16 Q. All right. So I'd like you to go to page 333,  
17 under Discussion.

18 A. Yeah.

19 Q. "It is clear from this investigation that  
20 postmortem digoxin levels taken from cardiac blood,  
21 venous blood or vitreous humour do not mirror the  
22 antemortem levels. Substantial increases in serum  
23 levels occur following death, irrespective of the source  
24 of the sample."

25 Did I read that correctly?

1 A. Yes.

2 Q. Do you agree with it?

3 A. I don't know. You know, I would like to see  
4 their data, their numbers.

5 Q. Well, if you go back one page --

6 A. Page, yeah, I'm looking.

7 Q. -- on table 2, that's the data within the  
8 article. Now, whether that's all the data, obviously we  
9 don't know, but that's the data from which they drew  
10 that conclusion.

11 A. Yes.

12 Q. So do you agree with their statement on page  
13 333, that that's what their data showed?

14 A. That's what their data showed, yes.

15 MR. MORIARTY: All right. Could you please  
16 hand Dr. Mason and Mr. Ernst Exhibit 17.

17 THE REPORTER: (Complying.)

18 MR. ERNST: This has to do with interpretation  
19 of excessive serum concentration in children?

20 MR. MORIARTY: That's the article.

21 MR. ERNST: You are maintaining that's relevant  
22 to a 44-year-old man?

23 MR. MORIARTY: It's a piece of literature, I'm  
24 going to ask him about it.

25 MR. ERNST: I'm going to object. He hasn't --



1 unless he has considered it, I'm going to object to this  
2 line of questioning.

3 Will you give me a continuing objection?

4 MR. MORIARTY: Yes, sir.

5 MS. AHERN: I'm going to object to speeches on  
6 the record.

7 MR. ERNST: She wants me to object, so I'm  
8 going to object unless he's reviewed this before. You  
9 can ask him questions but I don't believe it's proper  
10 subject for cross-examination.

11 BY MR. MORIARTY:

12 Q. Okay. Doctor, I want you to go -- first of  
13 all, have you ever seen this before?

14 A. No, I haven't read this before.

15 Q. Do you know who Gideon Koren is?

16 A. No.

17 Q. I'd like you to go to the Discussion section.

18 MR. ERNST: Mr. Moriarty, this is a three-page  
19 article. If you are going to ask him specific questions  
20 I'm going to object unless he has got a chance to read  
21 the entire article.

22 If you want to take that much time, you can,  
23 but I'm going to object to the line of questioning.  
24 It's an improper cross-examination.

25 MR. MORIARTY: I've given you a continuing line

1 of objections.

2 MR. ERNST: Your co-counsel would not do that.  
3 That's Ms. -- she would not agree to that.

4 MS. AHERN: I didn't object to the continuing  
5 objection.

6 MR. ERNST: You told me you wanted my  
7 objections on the record.

8 MS. AHERN: No, just to the speech on the  
9 record, that's all.

10 BY MR. MORIARTY:

11 Q. In the Discussion section, halfway down there  
12 is a sentence that begins "postmortem levels were  
13 significantly." I would like you to find that sentence.

14 A. I've got it.

15 Q. "Postmortem levels were significantly higher  
16 than antemortem levels in all children studied. These  
17 results are consistent with previous reports, suggesting  
18 that after death redistribution of digoxin takes place."

19 Do you agree with that statement?

20 A. Well, that's their data. That's what they  
21 found.

22 Q. Do these -- then the next sentence says, "these  
23 results are consistent with previous reports, suggesting  
24 that after death redistribution of digoxin takes place."

25 Do you agree with that?

1 MR. ERNST: I'm going to object.

2 You can go ahead and answer the question,  
3 Doctor.

4 A. Do I agree with it? Is that your question?

5 BY MR. MORIARTY:

6 Q. Yes, sir.

7 A. It's their data, that's what they found. I  
8 would agree with them, yes.

9 Q. Okay. The last line says, "an attempt to prove  
10 digoxin intoxication as a cause of death may be hampered  
11 by the fact that postmortem levels may be 1.5 to 10  
12 times higher than antemortem levels. Consequently, one  
13 cannot readily use these postmortem data to predict  
14 antemortem concentrations."

15 Do you agree with that?

16 MR. ERNST: I'm going to object.

17 A. Well, in their data, and in children, they are  
18 talking about a four-month-old child, I think that's a  
19 little bit different from the 40-year-old man. That's  
20 what they found.

21 BY MR. MORIARTY:

22 MR. MORIARTY: Okay. Let's go to -- please  
23 hand the doctor and Mr. Ernst Exhibit 18.

24 THE REPORTER: (Complying.)

25 BY MR. MORIARTY:

1 Q. Have you ever seen this before?

2 A. I think you mentioned it in the prior depo.

3 Q. Okay. I didn't have the actual article with  
4 me, though, so I'm going to ask you about it now.

5 On the first page, the second column, the first  
6 full paragraph.

7 MR. ERNST: Where are you?

8 BY MR. MORIARTY:

9 Q. Second column, first full paragraph.

10 MR. ERNST: I'm going to object to you  
11 selecting particular items out of an article and asking  
12 whether you agree or disagree. It's out of context,  
13 it's an improper line of cross-examination.

14 I'm placing my objection on the record so that  
15 you know my reasons for objecting.

16 BY MR. MORIARTY:

17 Q. It says, Doctor, "often, pathologists or  
18 toxicologists are requested to estimate the amount of  
19 drug present at the time of death, or the number of  
20 tablets consumed."

21 Would you agree that pathologists or  
22 toxicologists are sometimes asked to do that?

23 A. Are we referring to a specific drug, or what?

24 Q. I'm not right now, no.

25 A. I wouldn't attempt to estimate the number of

1 tablets consumed from a level, no.

2 Q. Okay. Well, the sentence says pathologists or  
3 toxicologists are requested to estimate the amount of  
4 drug present or the number of tablets. Do you agree  
5 that sometimes pathologists and toxicologists are asked  
6 to estimate -- excuse me -- the amount of drug present  
7 at the time of death?

8 MR. ERNST: Objection. It's vague.

9 Go ahead and answer the question.

10 A. I'm not sure what they mean. You know, if you  
11 are looking at a drug level in blood, the thing speaks  
12 for itself.

13 If you are also -- one type of thing that we do  
14 is to look at gastric contents, and you may see  
15 identifiable residua of large amounts of drug capsules.  
16 So, you know, that would tell you something.

17 If you decant gastric contents, in suicide  
18 cases you can sometimes see, when you let the material  
19 settle, a level of drug substance in the gastric fluid.  
20 So we look for those things.

21 Q. Did you do any analysis of the stomach residua  
22 in this case?

23 A. No.

24 Q. All right. The statement goes on to say that  
25 "this assumes that the drug concentration found" --

1     excuse me -- "at postmortem examination is a reliable  
2     estimate of that present at the time of death. There is  
3     a lack of evidence that such an extrapolation is  
4     possible."

5             Do you agree with that statement?

6             MR. ERNST: Objection.

7             A. No, not really.

8     BY MR. MORIARTY:

9             Q. Okay. Let's go to page 284, which is the last  
10     page of the text of the article.

11             The first sentence under Discussion says "these  
12     six cases illustrate that it can be dangerous to attempt  
13     to relate a drug concentration found at postmortem  
14     examination to the antemortem circulating concentration  
15     or to the antemortem dose received."

16             Do you agree with that?

17             A. Yeah --

18             MR. ERNST: I object.

19             A. -- I'd have to read the paper. You know, I  
20     don't know what their data show or what the cases are  
21     about.

22     BY MR. MORIARTY:

23             Q. Okay. Down further in that same column, the  
24     last full paragraph in column one says "it is often  
25     necessary to determine whether the drug concentration

1 found at postmortem examination should be attributed to  
2 either therapeutic ingestion or overdose. This is very  
3 difficult to determine because of the influences of  
4 postmortem change."

5 Do you agree with that?

6 MR. ERNST: I'm going to object. This article  
7 is about drugs in general. It's irrelevant to the  
8 particular issue.

9 You are asking him about excerpts from an  
10 article that he has not completely read.

11 BY MR. MORIARTY:

12 Q. Do you agree with it or not, Dr. Mason?

13 A. I wouldn't agree with it.

14 Q. That says "the use of postmortem/antemortem  
15 ratios, or back extrapolation from a postmortem  
16 concentration, is not recommended."

17 Do you agree or disagree?

18 MR. ERNST: Same objections.

19 A. You know, I don't know particularly what drug  
20 they are referring to, and I have no way of evaluating  
21 that sentence without at least reading the total  
22 article.

23 BY MR. MORIARTY:

24 Q. What -- what bench research or literature  
25 research have you done regarding the reliability of

1 postmortem blood samples of digoxin in predicting  
2 antemortem levels?

3 MR. ERNST: Are we talking about in his  
4 lifetime? In medical school? In the last year, two  
5 years? And it calls for --

6 MR. MORIARTY: My question --

7 MR. ERNST: Calls for speculation and a  
8 reciting of what he has learned over 50 years.

9 MR. MORIARTY: My question was quite clear.

10 Q. You can answer it, Doctor.

11 MR. ERNST: Same objections.

12 A. You know, I can't point to anything specific.  
13 You know, I have seen some articles, I don't recall the  
14 titles and authors.

15 MR. MORIARTY: Okay. Could you please hand the  
16 doctor and Mr. Ernst Exhibit 19.

17 THE REPORTER: (Complying.)

18 BY MR. MORIARTY:

19 Q. You know, before I ask you about this article,  
20 Doctor, can you pull out your deposition for me?

21 A. Yeah.

22 Q. At page 44, line 8, I asked "have you been  
23 asked by Mr. Ernst or anyone else to attempt a  
24 calculation of what Mr. McCornack's serum digoxin level  
25 was at the time of or just before he died?" And your



1 answer was "no."

2 Do you see that?

3 A. Yes.

4 Q. Have you since been asked by Mr. Ernst or  
5 anyone else in his office to attempt a calculation of  
6 Mr. McCornack's serum level, what it was at the time of  
7 or just before he died?

8 A. No.

9 Q. All right. Let's get back to Exhibit 19.  
10 Have you ever seen this article before --

11 A. No.

12 Q. -- from the British Journal of Clinical  
13 Pharmacology?

14 A. No.

15 Q. All right. Let's go to -- let's just go to the  
16 Conclusion, make this faster.

17 MR. ERNST: I'm going to object. The question  
18 is asking about a conclusion of a 15-page or 17-page  
19 article that he hasn't read, he is not familiar with,  
20 and you are going to ask him questions about the  
21 conclusions. It's an improper use of literature in a  
22 cross-examination setting.

23 MR. MORIARTY: Okay.

24 MR. ERNST: And objection.

25 BY MR. MORIARTY:

1 Q. Doctor, it says "there is no reliable or  
2 obvious connection between concentrations measured in  
3 life and subsequent to death. Consequently,  
4 concentrations measured after death cannot generally be  
5 interpreted to yield concentrations present before  
6 death."

7 Do you agree with that statement?

8 MR. ERNST: Objection.

9 A. No.

10 BY MR. MORIARTY:

11 Q. And what is the basis for your disagreement?

12 A. You know, this is sort of stupid, this thing.  
13 Most of our work, we are looking at antidepressants and  
14 narcoleptic -- narcotic drugs that are used, and when  
15 you have a sufficiently high level you attribute death  
16 to that, especially when the rest of the autopsy shows  
17 you nothing but brain swelling and pulmonary edema.

18 This is a bunch of shit. You know, this is  
19 contrary to the practice of most forensic pathologists,  
20 it's absolute bullshit.

21 Q. The -- in the rare occasions when you have had  
22 to testify about opiates, for example, do you know  
23 whether opiates undergo postmortem redistribution?

24 A. Yes, I think they do.

25 Q. Do you know who Derrick Pounder is?

1 A. Who?

2 Q. Derrick Pounder.

3 A. I've seen his name in the literature rather  
4 abundantly in regard to PMR.

5 Q. Okay. Do you know whether he is a reliable  
6 authority on the subject?

7 A. You know, I don't know the man at all. I don't  
8 know where he practices, or what kind of specialty he  
9 has. I don't know.

10 Q. Okay. Do you know who Cyril Wecht is?

11 A. Yes, I know Cyril Wecht.

12 Q. Is he considered to be a reliable authority in  
13 your field?

14 A. He is suspicious because he is also a JD.

15 Q. Okay. Does having a law degree make him any  
16 less reliable an authority in pathology?

17 A. I've met the man and talked to him. Anything  
18 he said, I'd want to see the quotes in the literature.

19 Q. Okay. Do you have his book from -- his 1983  
20 book?

21 A. Yeah, I think I do. Yeah.

22 MR. MORIARTY: All right. Could you please  
23 hand the doctor Exhibit 20.

24 THE REPORTER: (Complying.)

25 BY MR. MORIARTY:

1 Q. This is Dr. Pounder's chapter from Dr. Wecht's  
2 book. It's called The Nightmare of Postmortem Drug  
3 Changes.

4 Have you ever read this chapter?

5 A. What's the title of Dr. Wecht's book?

6 Q. I think it's Legal Medicine, or something like  
7 that.

8 A. I think I have the book. I don't recall this  
9 chapter.

10 Q. Okay.

11 A. I think essentially Pounder's thesis is that  
12 you can't tell much of anything from doing postmortem  
13 toxicology.

14 Q. And do you disagree with Pounder on that point?

15 A. It's not the mode of practice of most forensic  
16 pathologists. We depend on postmortem toxicology, along  
17 with autopsy findings.

18 Q. Well, certainly as you have gone through your  
19 career you would want to stay current with the  
20 literature and your colleagues to know the reliability  
21 of various aspects of postmortem toxicology; is that  
22 true?

23 A. Yeah, and I think Pounder is out on the  
24 periphery as far as his impression of the reliability of  
25 postmortem toxicology, or the usefulness of postmortem

1 toxicology in certifying a death.

2 You would want to know what kind of a practice  
3 Dr. Pounder does. Does he certify deaths? I don't even  
4 know if he is a forensic pathologist.

5 MR. MORIARTY: Okay. Let's -- could you please  
6 hand the doctor and Mr. Ernst Exhibit 22.

7 THE REPORTER: (Complying.)

8 BY MR. MORIARTY:

9 Q. Have you ever seen this article by these series  
10 of French authors?

11 A. Yes, I've seen it.

12 Q. Okay. And in what circumstances have you seen  
13 this?

14 A. I don't recall. I saw it -- I probably have a  
15 copy of it in a file somewhere.

16 Q. When you received Keith Gibson's deposition,  
17 did the exhibits come with it?

18 A. No, I don't think so.

19 Q. Okay. So the -- in the very beginning, in the  
20 Abstract it says "post" -- the very first sentence in  
21 the Abstract says "postmortem drug concentrations do not  
22 necessarily reflect concentrations at the time of death,  
23 as drug levels may vary according to the sampling site  
24 and the interval between death and specimen collection."

25 Do you agree with that?

1 MR. ERNST: Objection. You are asking a  
2 specific question about a line in an article without  
3 reference that he has read and reviewed the entire  
4 article. It's out of context.

5 With that objection, you can go ahead and  
6 answer the question.

7 A. You know, there is some validity to the  
8 statement, you know, you would have to look at it in  
9 reference to a particular case. I don't know what to  
10 say about it other than that.

11 BY MR. MORIARTY:

12 Q. Okay. Well, digoxin is known to redistribute  
13 in the postmortem period; is it not?

14 A. Yes.

15 MR. ERNST: Objection, asked and answered.

16 A. Yes, it is.

17 BY MR. MORIARTY:

18 Q. All right. Let's go to page 541, left column,  
19 there is a section that says -- there is a section that  
20 says Practical Consequences in Forensic Toxicology.

21 Do you see that?

22 A. Yes.

23 Q. The second sentence says, "it is very important  
24 in postmortem testing to be able to compare  
25 concentrations in several blood and tissue samples, even

1 if reference values for drug concentrations in tissues  
2 are often missing."

3 Do you agree with that?

4 A. You know, that would be ideal if you are doing  
5 a research project. If you are moving, say 200 corpses  
6 down the chute in the course of a year, you cannot  
7 afford to do that, and you don't have time to do it.

8 Q. Okay. Do you know Graham Jones from the  
9 medical examiner's office in Edmonton?

10 A. No.

11 Q. Do you know whether he is a reliable authority  
12 in forensic pathology?

13 A. I don't know the man at all. I don't know  
14 anything about him.

15 Q. Do you have Steven Karch's Postmortem  
16 Toxicology of Abused Drugs book?

17 A. Yes, I do.

18 Q. All right. And why do you have that book?

19 A. I know Karch, and he has done some interesting  
20 work. I bought the book.

21 MR. MORIARTY: Okay. Well, let me ask you  
22 about Exhibit 23, please.

23 THE REPORTER: (Handing document to witness and  
24 counsel.)

25 BY MR. MORIARTY:

1 Q. Do you have that?

2 A. Yes.

3 Q. Okay. On the first page of the text, second --  
4 the last sentence of the second paragraph.

5 MR. ERNST: What page?

6 THE WITNESS: 114.

7 MR. MORIARTY: It's 114.

8 MR. ERNST: Okay.

9 BY MR. MORIARTY:

10 Q. Last sentence of the second paragraph. It says  
11 "many processes occur after death that can change drug  
12 and alcohol concentrations, sometimes to a very large  
13 extent."

14 Do you agree with that generally?

15 MR. ERNST: I'm going to object that that is  
16 referring to a number of different drugs, alcohol, not  
17 necessarily digoxin. I'm going to object.

18 You can go ahead and answer the question.

19 BY MR. MORIARTY:

20 Q. Do you agree generally, Doctor?

21 A. Without reading the whole section, I don't know  
22 what he is talking about, you know. "Many processes,"  
23 like what processes? Adding drug to a specimen? You  
24 know, what does he mean?

25 Q. Let's go to page 123. There is a section



1 called Estimation of Amount Ingested from Blood Levels.

2 It says there, "given" -- are you there?

3 A. I'm here.

4 Q. "Given the foregoing discussion, it should go  
5 without saying that using pharmacokinetic calculations  
6 to try to estimate dosage, given a postmortem blood  
7 concentration, is of virtually no value and can be  
8 extremely misleading."

9 Do you agree or disagree?

10 A. I don't know what he means. "Estimate dosage."

11 Q. In other words, trying to estimate what the  
12 person ingested before they died.

13 MR. ERNST: Objection. You are interpreting  
14 what this article said.

15 MR. MORIARTY: Okay, that's fine.

16 MR. ERNST: Objection.

17 A. I -- you know, I would be more interested in  
18 what the postmortem level was, and if it's of an  
19 appropriate magnitude, one might use that in attributing  
20 death to that particular drug, which is what most  
21 forensic pathologists do, and any -- and the  
22 accompanying autopsy findings. So.

23 BY MR. MORIARTY:

24 Q. Okay.

25 A. So I'm not quite sure what he means here.

1 Q. All right. So let's go to 6.4, which is the  
2 next section.

3 "One question should be asked before attempting  
4 to interpret postmortem drug concentrations. Is the  
5 concentration found likely to represent, at least  
6 approximately, that present at the time of death?  
7 Unfortunately, the answer is often a flat no, or at  
8 least not necessarily."

9 Do you agree with that?

10 MR. ERNST: I'm going to object.

11 A. No -- without reading this, I'm not going to  
12 make a comment on that. Again, I would say it is  
13 contrary to the usual practice in forensic pathology.

14 You know, again, if you can't come to any  
15 conclusions, why is he with the office of the chief  
16 medical examiner, and I see from his DABFT that he is a  
17 certified forensic toxicologist? What he is he doing up  
18 there? I mean, why is he doing the tests?

19 BY MR. MORIARTY:

20 Q. Well, Doctor, there is a difference, certainly,  
21 between identification and quantification in your  
22 business; isn't that true?

23 A. Yes.

24 Q. Do you know Dr. Fred Apple?

25 A. No.

1 Q. At the Minnesota Department of Lab Medicine and  
2 Pathology in Minneapolis?

3 A. No.

4 Q. Do you know anything about his reputation?

5 A. No.

6 MR. MORIARTY: Could you please hand Dr. Mason  
7 Exhibit 24.

8 THE REPORTER: (Complying.)

9 BY MR. MORIARTY:

10 Q. It says here in the second paragraph, "the  
11 scientific fact is that PMR occurs in both central  
12 (heart) blood as well as in peripheral (femoral) blood,  
13 as shown for numerous drugs in Table I."

14 Do you agree with that?

15 MR. ERNST: I'm going to object. This is a  
16 letter to the editor of the Journal of Analytical  
17 Toxicology.

18 BY MR. MORIARTY:

19 Q. Do you agree with that, Doctor?

20 MR. ERNST: And it is an improper use of  
21 cross-examination based on literature that this doctor  
22 has not read or reviewed.

23 With that objection, you may answer the  
24 question.

25 A. I don't know. You know, I would have to read

1 it. I would like to read his accompanying references  
2 and see what he is talking about.

3 BY MR. MORIARTY:

4 Q. Okay. Let me ask you just one more quote, then  
5 I will stop asking you about literature.

6 On the next page, at the end of that paragraph  
7 that spills over from the previous page, it says "when  
8 heart or peripheral blood is drawn, it more likely than  
9 not does not reflect the blood concentration at the time  
10 of death, but reflects the combination of tissue-bound  
11 drug that has been released into the blood/fluid that is  
12 drawn at autopsy hours after death."

13 Do you agree with that?

14 A. It's possible.

15 Q. It's possible you agree?

16 MR. ERNST: Objection --

17 A. It's possible that it's true.

18 BY MR. MORIARTY:

19 Q. Okay. Well, the sentence says "when heart or  
20 peripheral blood is drawn, it more likely than not does  
21 not reflect the blood concentration," they are talking  
22 about probability.

23 Do you agree or disagree?

24 MR. ERNST: I object, no foundation. You are  
25 asking him to agree to an article that he hasn't read,

1 nor has he reviewed the data, nor is there any  
2 indication this is peer reviewed. This is a letter to  
3 the editor.

4 A. You know I --

5 MR. MORIARTY: You have stated your --

6 A. I don't know. I would have to read the article  
7 and maybe read some of the references that he is  
8 referring to.

9 MR. MORIARTY: Okay.

10 Q. Well, Exhibit 27 should be the amended notice  
11 to take your deposition, and I believe that was served  
12 on you. I hope it was.

13 A. Yes, it was.

14 Q. Did you bring your file?

15 A. Yeah.

16 Q. And in the file that you brought is there any  
17 medical literature other than the pharmacology text that  
18 you described for me before?

19 A. No.

20 Q. All right. And to be fair, obviously in our  
21 first session you brought some literature that is  
22 included in Exhibits 1 through 15, I think; correct?

23 A. Yes.

24 Q. Other than that have you brought any medical  
25 literature to your deposition?

1 A. No.

2 Q. Are you relying on any other medical literature  
3 other than that which you brought to your deposition?

4 A. No.

5 Q. Now I asked you what additional material you  
6 have reviewed since October 2009, and you mentioned some  
7 reports and depositions, and I think that pharmacology  
8 text.

9 Is there anything else in your file today that  
10 was not in your file when we were together in San Jose  
11 almost two years ago?

12 A. No.

13 Q. Have you sent Mr. Ernst any billings for work  
14 performed between the beginning of October 2009 and  
15 today?

16 A. No.

17 Q. Do you know how many hours you have worked on  
18 this case in the last six months?

19 A. No. It's been fairly recent. I think I've put  
20 in about eight, eight and a half hours in the past few  
21 days to reacquaint myself with the case.

22 I'm doing other service work, you know, this is  
23 not my sole occupation. This case.

24 Q. I understand that. And excuse me if I asked  
25 you this before, did you read the deposition of Dr.

1 Barbieri in this case?

2 A. No, I haven't seen it.

3 Q. Has Mr. Ernst paraphrased what Dr. Barbieri  
4 said?

5 A. Yes, I think he has.

6 Q. All right. And you know that Mr. Ernst  
7 identified Dr. Barbieri from NMS as an expert in this  
8 case; right?

9 A. Yes.

10 MR. MORIARTY: I don't have any other  
11 questions.

12 Hunter?

13 MS. AHERN: I don't, either.

14 MR. MORIARTY: Don, do you have questions?

15 MR. ERNST: I do.

16 EXAMINATION BY MR. ERNST

17 Q. Doctor, before this deposition began there was  
18 a package here with the documents, all these articles  
19 that he has questioned you about, and we asked to see  
20 those documents before your deposition; is that true?

21 A. Yes.

22 Q. And Mr. Moriarty --

23 MR. MORIARTY: Objection.

24 BY MR. ERNST:

25 Q. Mr. Moriarty refused to let you look at any of

1 these documents before this deposition; true?

2 A. Yes.

3 MR. MORIARTY: Objection.

4 BY MR. ERNST:

5 Q. And in fact the court reporter told you that  
6 she had been instructed by Mr. Moriarty that she was not  
7 to let you look at any of the documents that he was  
8 going to ask you about during the deposition; true?

9 A. Yes.

10 MR. MORIARTY: Objection.

11 BY MR. ERNST:

12 Q. So you asked to review this material, to give  
13 you time to read it and review it, and you were never  
14 given an opportunity to do that; is that an accurate  
15 statement?

16 A. Yes.

17 MR. MORIARTY: Objection.

18 MS. AHERN: Objection.

19 BY MR. ERNST:

20 Q. Now, you were asked in your deposition about  
21 this Vorpahl article, it's been marked as Exhibit 16;  
22 true?

23 A. Yes.

24 Q. And you indicated that this is one of the  
25 articles that you have seen in your past; true?



1 A. Yes.

2 Q. Now there is a whole host of literature and  
3 articles that you have read over your many, many years  
4 of being a forensic pathologist that you don't keep  
5 track of that you read, review and just throw into the  
6 hopper of some of the bases for your opinions; is that  
7 accurate?

8 MS. AHERN: Objection, leading.

9 A. Yes.

10 BY MR. ERNST:

11 Q. All right. Now, looking at Exhibit 16, page  
12 329, on the first page, 329.

13 A. Yes.

14 Q. The last full paragraph there above Materials  
15 and Methods it says "the purpose of the present study is  
16 fourfold."

17 Do you see that?

18 A. Yes.

19 Q. And the last purpose, and I quote, is to  
20 "finally to establish the most accurate way of  
21 estimating digoxin toxicity from postmortem specimens."

22 Do you see that?

23 A. Yes.

24 Q. So this article is an effort to establish the  
25 most accurate way of estimating digoxin toxicity from

1 postmortem specimens.

2 MS. AHERN: Objection, leading.

3 BY MR. ERNST:

4 Q. Is that accurate?

5 A. Yes.

6 Q. All right, now, in fact, in the conclusion, or  
7 in the Summary at page 333 there is -- part of the  
8 conclusion is that there is a postmortem to antemortem  
9 ratio that is given for subclavian veins and femoral  
10 vein samples; true?

11 A. Yes.

12 MS. AHERN: Objection.

13 BY MR. ERNST:

14 Q. Now, are those peripheral samples, Doctor?

15 MR. MORIARTY: Objection.

16 A. Subclavian vein and femoral vein would be  
17 peripheral, yes.

18 BY MR. ERNST:

19 Q. And in fact this is part of the literature that  
20 you've thrown in to your hopper, if you will?

21 A. Yes.

22 MS. AHERN: Objection.

23 BY MR. ERNST:

24 Q. Now, Doctor, at the time that you rendered your  
25 opinion that's on Exhibit 5 --

1 A. Yes.

2 Q. -- to your original deposition --

3 A. Yes.

4 Q. -- you established and concluded that the cause  
5 of death to Mr. McCornack was due to ventricular  
6 arrhythmia due to digoxin toxicity due to digoxin  
7 poisoning; is that accurate?

8 A. Yes.

9 Q. Doctor, after a review of all the material, all  
10 the information, all the information that you have,  
11 including -- is that still your opinion today?

12 A. Yes.

13 Q. Now, I was going to ask, and that includes, you  
14 were aware that there was a digoxin recall from  
15 Actavis --

16 A. Totowa.

17 Q. -- Actavis Totowa?

18 A. And Mylan.

19 Q. Mylan?

20 A. Yes.

21 MS. AHERN: Objection.

22 BY MR. ERNST:

23 Q. And did you see, or were you aware of the  
24 reason for the recall?

25 A. Yes.

1 Q. And the reason for the recall was what, as you  
2 recall?

3 A. That something had occurred in the manufacture  
4 of the tablets and some of them were thicker and may  
5 contain twice as much drug as they were supposed to  
6 contain.

7 Q. Now this recall notice occurred in May of 2008?

8 A. Yes.

9 Q. And the death of Mr. McCornack occurred in  
10 March of 2008?

11 A. Yes.

12 Q. So the recall notice came after his death.

13 A. Yes.

14 MS. AHERN: (Inaudible.)

15 THE REPORTER: Excuse me, did you object?

16 MS. AHERN: I did. Objection.

17 MR. ERNST: And the basis for your objection is  
18 what?

19 MS. AHERN: I didn't realize that your theory  
20 was double thick. I thought you had a completely  
21 different theory and that the recall notice is  
22 irrelevant.

23 MR. ERNST: I don't think the recall notice is  
24 irrelevant.

25 MS. AHERN: If your theory isn't double thick.

1 MR. ERNST: You know, it's interesting that you  
2 are putting on the record what you perceive my theory  
3 is. We are not going to go there.

4 MS. AHERN: I'm just making my objection.

5 MR. ERNST: You make your objection, that's  
6 fine.

7 Q. Doctor, did you factor into your whole scenario  
8 the fact that there was a recall for the drug that Mr.  
9 McCornack was taking at the time of his death?

10 A. Yes.

11 MR. MORIARTY: Objection.

12 BY MR. ERNST:

13 Q. And the -- Doctor, in rendering your opinion as  
14 to the cause of death of Mr. McCornack, did you and do  
15 you include all of the information that is out there for  
16 you available to consider of which you were aware at the  
17 time?

18 A. Yes.

19 MR. MORIARTY: Objection.

20 BY MR. ERNST:

21 Q. And a listing of those items in Mr. McCornack's  
22 case, would that include the history of Mr. McCornack on  
23 the day of his death?

24 A. Yes.

25 Q. Would it include the medical records of his

1 treating physician, Dr. Lemm?

2 A. Yes.

3 Q. Would it include the medical records of his  
4 cardiologist, Dr. Von Dollen?

5 A. Yes.

6 Q. Would it include any information given to you  
7 from any source about how he was taking his drugs on the  
8 date of his death?

9 A. Yes.

10 Q. Would it include the fact that there was a drug  
11 recall for digoxin?

12 A. Yes.

13 Q. Would it include --

14 MR. MORIARTY: Objection.

15 BY MR. ERNST:

16 Q. Would it include the fact that the postmortem  
17 test for digoxin came back at 3.6?

18 A. Yes.

19 MR. MORIARTY: Objection.

20 BY MR. ERNST:

21 Q. And it would include all of the literature of  
22 which you were aware and have been asked about today and  
23 actually a lot of literature that you are aware of but  
24 that you can't specifically name today, based on what  
25 you read over 50 years?

1 MR. MORIARTY: Objection.

2 A. Yes.

3 MS. AHERN: Objection.

4 BY MR. ERNST:

5 Q. Doctor, the opinion that you have on Exhibit 5  
6 -- in fact I should just ask you, Doctor, if you can  
7 look at Exhibit 5.

8 Can you tell us the opinion that you have today  
9 on the cause of death of Mr. McCornack?

10 A. Cardiac arrest due to ventricular arrhythmia  
11 due to digoxin toxicity due to digoxin poisoning.

12 MR. ERNST: Thank you very much, Doctor, I  
13 don't have any other questions.

14 MR. MORIARTY: I have a few.

15 MS. AHERN: Thank you, Doctor.

16 FURTHER EXAMINATION BY MR. MORIARTY

17 Q. Dr. Mason, did you and I personally speak  
18 before this deposition started?

19 A. No.

20 Q. Did you ask me directly whether you could  
21 review anything in the exhibit envelope?

22 A. No.

23 Q. Okay. The discussion that was had about  
24 whether you and Mr. Ernst were going to see the exhibits  
25 was between me and Don Ernst off the record on the

1 telephone; isn't that correct?

2 A. Yes.

3 Q. Okay. I'd like you to look at Exhibit 16.

4 A. Yes.

5 Q. The -- the data for these ratios that are  
6 contained in this article are based on information in  
7 Tables 1 and 2; correct?

8 A. Yeah, I believe so. Yeah.

9 Q. All right. And so the ratios are averages  
10 based on those tables; is that right?

11 A. You know, I don't know. I am really reluctant  
12 to make comments on something that I haven't read, you  
13 know.

14 Q. Okay. That's fine.

15 To your memory, is there anything in this  
16 article that says that you can reliably use those ratios  
17 to back-calculate from a postmortem to an antemortem  
18 level?

19 A. I don't know. Since I haven't read it  
20 recently, I don't know.

21 Q. Okay. Do you -- are you aware of any  
22 scientific data which actually compares subclavian  
23 specimens with femoral specimens and heart specimens?

24 MR. ERNST: Objection. As to what? Specimens  
25 of what?



1 MR. MORIARTY: Postmortem redistribution.

2 MR. ERNST: Of what? Objection.

3 MR. MORIARTY: Drugs. Drugs.

4 MR. ERNST: Objection. Vague.

5 A. You know, in my memory there are some such  
6 articles, but I don't particularly remember any details  
7 about them.

8 BY MR. MORIARTY:

9 Q. Can you cite any article that specifically says  
10 that a subclavian specimen is a peripheral specimen?

11 A. You know, from a common sense point of view,  
12 from an anatomist point of view, somebody that's using a  
13 dissecting knife on the human body, it would make more  
14 sense that the subclavian vein was peripheral than the  
15 femoral vein, which is coming right off the aorta, which  
16 is about a three-quarter inch diameter vessel that comes  
17 off the heart.

18 So, you know, I would think if someone is going  
19 to talk about a peripheral vessel, that a subclavian  
20 vein is more peripheral than a femoral vein.

21 Q. Okay. But you don't know of any data that  
22 actually compares specimens to know which redistributes  
23 more or less than a heart specimen?

24 A. No, I don't. No.

25 Q. I think based on what I asked you before you

1 haven't reviewed anything about the manufacture of  
2 Digitek; is that true?

3 A. I'm sorry, could you repeat that?

4 Q. Sure. You haven't reviewed anything at all  
5 about the manufacture of Digitek, have you?

6 A. No.

7 Q. Okay. And you don't know if in fact  
8 out-of-specification pills made it to consumers or not,  
9 do you?

10 A. I don't know that, no.

11 Q. All right. And if any did, you don't know how  
12 many or what their defect was; right?

13 A. That's true.

14 Q. Okay. Do you know that NMS Labs tested for  
15 content six of Mr. McCornack's prescription?

16 A. No, I don't know that.

17 Q. Do you think that would be important for you to  
18 know?

19 A. It would be very interesting to know, yeah.

20 Q. And --

21 A. Who commissioned this, by the way?

22 Q. Mr. Ernst did.

23 A. Okay.

24 Q. If those six tablets were within the  
25 specifications by their chemical content, what effect

1 would that have on your opinion, if any?

2 MR. ERNST: Objection. Asked and answered in  
3 the first deposition transcript.

4 A. You know, I don't know. If there is variation,  
5 I don't know.

6 BY MR. MORIARTY:

7 Q. Okay. Do you know how many of Mr. McCornack's  
8 left-over tablets Mr. Ernst has in his possession that  
9 he could weigh or measure if given the appropriate  
10 equipment?

11 A. No, I don't.

12 Q. Do you know if any of them were found to be out  
13 of specification by their size or weight? Those in Mr.  
14 Ernst's possession.

15 A. I don't know that.

16 Q. Is that significant to you at all in forming  
17 opinions in this case?

18 MR. ERNST: Objection.

19 You can go ahead and answer the question.

20 A. It would be interesting. Again, my focus would  
21 be on the postmortem level of digoxin.

22 BY MR. MORIARTY:

23 Q. Okay. That's really what you based your  
24 opinion on in this case; isn't that true?

25 MR. ERNST: Objection, misstates the witness,

1 along with all the other items that he considered.

2 A. You know, that and his history and the autopsy  
3 findings, yeah.

4 BY MR. MORIARTY:

5 Q. The only piece of new data that you looked at  
6 before your last deposition when you changed your  
7 autopsy report was the toxicology; correct?

8 MR. ERNST: Objection. Misstates his  
9 testimony. Included the recall, there was a bunch of  
10 other information. You are misstating the witness's  
11 testimony.

12 MR. MORIARTY: Hey, Don, now you are coaching  
13 and you have gone over the line.

14 Q. Doctor, the only data on which you based the  
15 change in your autopsy report when I came to California  
16 in 2009 was the toxicology; isn't that correct?

17 MR. ERNST: Same objections.

18 A. That was the major factor, plus the, you know,  
19 the story that there was some -- perhaps there was  
20 something wrong with the Digitek tablets.

21 BY MR. MORIARTY:

22 Q. Perhaps there was something wrong?

23 A. Yeah.

24 Q. Is that what you said?

25 A. Perhaps some of the drug that he had gotten in

1 his possession was other than the level it was supposed  
2 to be.

3 Q. Do you have any evidence, to a reasonable  
4 degree of probability, that any Digitek that Dan  
5 McCornack received was in fact outside any of its  
6 manufacturing specifications?

7 MR. ERNST: Objection. Besides the recall  
8 itself?

9 MR. MORIARTY: Thanks for coaching. Move to  
10 strike your comments, Don.

11 A. No.

12 BY MR. MORIARTY:

13 Q. You can answer my question.

14 A. I don't, no.

15 MR. MORIARTY: Thank you. Nothing further.

16 MR. ERNST: Can I see the box that all these  
17 exhibits came in, please, Madam Reporter.

18 MR. MORIARTY: No, you can't, because I didn't  
19 show them all to the witness. So there are exhibits in  
20 there that are my work product.

21 MR. ERNST: Okay. That's fine.

22 FURTHER EXAMINATION BY MR. ERNST

23 Q. Doctor, did the -- did we ask to see the  
24 documents in the court reporter's presence?

25 A. Yes.

1 Q. Did the court reporter state to you that she  
2 had been given instructions by Mr. Moriarty to not open  
3 the box until the video camera -- or the video was on  
4 and the deposition was ongoing?

5 A. Yes.

6 MR. ERNST: No other questions.

7 MR. MORIARTY: We are done.

8 MR. ERNST: Thank you.

9 MR. MORIARTY: He can -- Doctor, you know your  
10 rights regarding reading and signing?

11 THE WITNESS: Yes.

12 MR. MORIARTY: Hunter?

13 MS. AHERN: Yes.

14 MR. MORIARTY: I'll be back in my office in  
15 about five minutes, if you want to give me a call.

16 MS. AHERN: Okay.

17 MR. ERNST: Thank you, Mr. Moriarty.

18 MR. MORIARTY: Doctor, thank you for going to  
19 the video center, I appreciate your consideration.

20 You too, Don.

21 MR. ERNST: Matt, speaking of which I don't  
22 think he has been paid for the first portion of his  
23 depo.

24 MR. MORIARTY: Did he ever bill me? That's the  
25 first question.

1 MR. ERNST: There is some billing also that you  
2 said that you just sent out to us. I will check on that  
3 and we will see that the appropriate bills to the  
4 appropriate experts are paid.

5 By the way, there is some issue with regard to  
6 the PFC and part of the experts and hopefully we will  
7 iron that out and I will get back to you on that.

8 MR. MORIARTY: I appreciate that.

9 But Dr. Mason, I don't know if you can see me,  
10 you need to bill me either directly or through Don for  
11 me to get you paid for the sessions where we spend time.

12 THE WITNESS: I understand that, and I say that  
13 it was my fault that I haven't been paid because, as you  
14 pointed out, I had not billed you.

15 MR. MORIARTY: Okay. I feel better.

16 MR. ERNST: Thank you, Mr. Moriarty.

17 MR. MORIARTY: Bill me for time, I will get you  
18 paid. Put it in one bill for 2009, which I remember was  
19 three plus hours, and today was close to that.

20 THE WITNESS: Okay.

21 MR. MORIARTY: Two and a half.

22 MR. ERNST: Thank you.

23 MR. MORIARTY: All right. Take care.

24 MR. ERNST: He is going to read and sign this;  
25 okay?

1 THE REPORTER: Okay.

2 (Time Noted: 12:55 p.m.)

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## 1 REPORTER'S CERTIFICATE

2 The undersigned Certified Shorthand Reporter  
3 licensed in the State of California does hereby certify:

4 I am authorized to administer oaths or  
5 affirmations pursuant to Code of Civil Procedure,  
6 Section 2093(b), and prior to being examined, the  
7 witness was duly administered an oath by me.

8 I am not a relative or employee or attorney or  
9 counsel of any of the parties, nor am I a relative or  
10 employee of such attorney or counsel, nor am I  
11 financially interested in the outcome of this action.

12 I am the deposition officer who  
13 stenographically recorded the testimony in the foregoing  
14 deposition, and the foregoing transcript is a true  
15 record of the testimony given by the witness.

16 Before completion of the deposition, review of  
17 the transcript [x] was [ ] was not requested. If  
18 requested, any changes made by the deponent (and  
19 provided to the reporter) during the period allowed are  
20 appended hereto.

21 In witness whereof, I have subscribed my name  
22 this 19th day of August, 2011.

23  
24  
25  
Allison Ash-Hoyman, CSR No. 7412

DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT NO. 39073

CASE NAME: Digitek Products Liability Litigation v.

DATE OF DEPOSITION: August 11, 2011

WITNESS' NAME: Richard T. Mason, M.D.

In accordance with the Rules of Civil Procedure,  
I have read the entire transcript of my testimony or it  
has been read to me.

I have made no changes to the testimony as  
transcribed by the court reporter.

\_\_\_\_\_  
Date Richard T. Mason, M.D.

Sworn to and subscribed before me, a Notary Public in  
and for the State and County, the referenced witness did  
personally appear and acknowledge that:

They have read the transcript;  
They signed the foregoing sworn Statement; and  
Their execution of this Statement is of their free  
act and deed.

I have affixed my name and official seal this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

1 DEPOSITION REVIEW

CERTIFICATION OF WITNESS

2 ASSIGNMENT NO. 39073

3 CASE NAME: Digitek Products Liability Litigation

4 DATE OF DEPOSITION: August 11, 2011

5 WITNESS' NAME: Richard T. Mason, M.D.

6 In accordance with the Rules of Civil Procedure,  
7 I have read the entire transcript of my testimony or it  
8 has been read to me.

9 I have listed my changes on the attached Errata  
10 Sheet, listing page and line numbers as well as the reason(s)  
11 for the change(s).

12 I request that these changes be entered as part of the  
13 record of my testimony.

14 I have executed the Errata Sheet, as well as this  
15 Certificate, and request and authorize that both be appended  
16 to the transcript of my testimony and be incorporated therein.

17 \_\_\_\_\_  
18 Date Richard T. Mason, M.D.

19 Sworn to and subscribed before me, a Notary Public in  
20 and for the State and County, the referenced witness did  
21 personally appear and acknowledge that:

22 They have read the transcript;  
23 They have listed all of their corrections in the  
24 appended Errata Sheet  
25 They signed the foregoing sworn Statement; and  
Their execution of this Statement is of their free  
act and deed.

26 I have affixed my name and official seal this \_\_\_\_\_  
27 day of \_\_\_\_\_, 20\_\_\_\_.

28 \_\_\_\_\_  
29 Notary Public

30 \_\_\_\_\_  
31 Commission Expiration Date

## 1 ERRATA SHEET

2 RENNILLO DEPOSITION &amp; DISCOVERY - A VERITEXT COMPANY

3 ASSIGNMENT NO. 39073

4 CASE NAME: Digitek Products Liability Litigation

5 DATE OF DEPOSITION: August 11, 2011

6 WITNESS' NAME: Richard T. Mason, M.D.

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20 Richard T. Mason, M.D.

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_

22 DAY OF \_\_\_\_\_, 20\_\_\_\_.

23 \_\_\_\_\_  
24 NOTARY PUBLIC

25 MY COMMISSION EXPIRES \_\_\_\_\_

Rennillo Deposition &amp; Discovery

A Veritext Company

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